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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,324	10/03/2002	Mats Holgersson	03485.0004NP	9313

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HOWREY LLP
C/O IP DOCKETING DEPARTMENT
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EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/065,324

Applicant(s)

HOLGERSSON, MATS

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Newly submitted claims 22-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 4-18 are drawn to a method of detecting positions of a stapler driver.

Claims 22-24 are drawn to a method of detecting drive shaft speed and degree of rotation in a stapler.

Inventions of claims 4-18 and claims 22-24 are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination of claims 4-18 requires detection of a stapler driver during a stapling process using a microprocessor which has separate utility, such as use in a process that does not detect drive shaft speed and degree of rotation and adjustment of current supply as required in the subcombination of claims 22-24. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention of claims 4-18, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 4-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiroi et al. (USPN 5,230,457).

In reference to claims 4-18, Hiroi et al. discloses a method for controlling an electric stapler, the method comprising: arranging a sensor (13) for detecting positions of a staple driver (105) during a stapling process; utilizing a microprocessor (301; column 5, lines 14-17) to analyze speed (figure 15) and sensed positions of the staple driver (105) and controlling the positional changes of the staple driver (105) by supplying controlled magnitudes of electrical current to an electric drive motor (10) on a real time basis (column 5, lines 42-57); the electric drive motor (10) having a drive shaft (figure 3) interconnected to the staple driver (105) via at least one toothed gear (7, 11) and reversing the drive shaft at the completion of a stapling action (column 5, lines 27-36).

Response to Arguments

4. Applicant's arguments filed September 8, 2005 have been fully considered but they are not persuasive.

Applicant has argued that Hiroi fails to disclose the claimed sensor which detects positions of a staple driver during a stapling process, rather teaches a current sensor that controls actuation of the staple driver. Examiner agrees that Hiroi discloses a current sensor, however, Hiroi also discloses a home position sensor responsive to a microswitch triggered by sensor cam, wherein the home position sensor is detect the placement of the stapler (column 3 lines 54-62).

Applicant further argues that Hiroi fails to disclose controlling positional changes of the stapler in response to the sensed/detected position of the stapler. Examiner disagrees as column

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

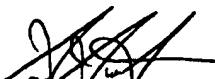
Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

Gloria R. Weeks
Examiner
Art Unit 3721


grw

January 4, 2007


SCOTT A. SMITH
PRIMARY EXAMINER